Supreme Court, U.S.
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No. 92-2050

In The

Supreme Court of the United States

October Term, 1993

SUZANNE CLARK,

Petitioner,

v.

GEORGE H. CLARK, EXECUTOR; THE DISTRICT COURT FOR THE STATE OF IOWA, STORY COUNTY; THE SUPREME COURT OF IOWA,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

OPPOSITION OF GEORGE H. CLARK, EXECUTOR, TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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LIST OF PARTIES TO THE PROCEEDING

Suzanne Clark, Petitioner

George H. Clark, Executor, Respondent

The District Court of the State of Iowa in and for Story County, Respondent

The Supreme Court of the State of Iowa, Respondent

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REFERENCES TO REPORTS OF THE OPINIONS DELIVERED IN THE CASE BY OTHER COURTS

It should be noted that the entire substance of this case has previously been reviewed in the Iowa courts, as reported in the following cases:

1. *In the Matter of the Estate of Clark*, 447 N.W.2d 549 (Iowa App. 1989).

2. *Clark v. Clark and Merchants Mutual Bonding Co.*, 476 N.W.2d 367 (Iowa 1991), cert. denied, ___ U.S. ___, 112 S.Ct. 640, 116 L.Ed.2d 658 (1991).

STATEMENT OF THE CASE

The factual material set forth in Petitioner's Statement of Facts has been fully and fairly determined by the courts of the State of Iowa and resolved against the Petitioner. This case, at the initiations of the Petitioner, has been in continuous litigation since the death of Ferne R. Clark, which occurred on the 21st day of April, 1988. There have been numerous hearings in the District Court of the State of Iowa and two state appeals, *In the Matter of the Estate of Clark*, 447 N.W.2d 549 (Iowa App. 1989) and *Clark v. Clark and Merchants Mutual Bonding Co.*, 476 N.W.2d 367 (Iowa 1991), cert. denied, ___ U.S. ___, 112 S.Ct. 640, 116 L.Ed.2d 658 (1991).

After these cases were finally concluded in the state courts, the Petitioner commenced this action in the United States District Court in an attempt to relitigate the same questions which had been fully resolved in the state court proceedings. The United States District Court and

the U.S. Court of Appeals correctly determined that the Petitioner could not relitigate the same issues under the guise that the Petitioner's constitutional rights had been denied.

The Petitioner brings this action as a collateral attack upon the judgments of the two state court actions based upon the claim that the courts failed to consider the Petitioner's constitutional arguments. In truth, the state courts have done so. In *In the Matter of the Estate of Clark*, 447 N.W.2d 549 (Iowa App. 1989), the Iowa Court of Appeal stated:

> The constitutional claims of the Appellant are without merit but will be addressed briefly.

Id. at 553. Although the Petitioner's constitutional claims were not specifically addressed in the later per curiam opinion of the Iowa Supreme Court, the Petitioner did apply this Court for certiorari, which was denied. *Clark v. Clark and Merchants Mutual Bonding Co.*, 476 S.Ct.2d 367 (Iowa 1991), cert. denied, ___ U.S. ___, 112 S.Ct. 640, 116 L.Ed.2d 658 (1991).

No new issues are presented to this Court that were not previously submitted to the Iowa courts.

SUMMARY OF ARGUMENT

The United States Eighth Circuit Court of Appeals correctly applied the law to the facts of this case.

The Petitioner sued the District Court of Iowa in and for Story County and the Supreme Court of Iowa in an action brought pursuant to 42 U.S.C. § 1983. The United

States Court of Appeals correctly held that the courts were not proper parties in an action brought pursuant to 42 U.S.C. § 1983 since the courts are not considered "persons" within the meaning of the statute. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989).

Petitioner is simply attempting, under the guise of alleging a violation of her constitutional rights, to relitigate the same issues that have been fully and fairly determined by the courts of the State of Iowa. *In the Matter of the Estate of Clark*, 447 N.W.2d 549 (Iowa App. 1989) and *Clark v. Clark and Merchants Mutual Bonding Co.*, 476 N.W.2d 367 (Iowa 1991), cert. denied, ___ U.S. ___, 112 S.Ct. 640, 116 L.Ed.2d 658 (1991).

ARGUMENT

The United States Eighth Circuit Court of Appeals made the following determinations:

1. It is not proper to make a court a defendant in litigation brought pursuant to 42 U.S.C.A. § 1983 since courts are not persons under the Act. *See* Petition for Certiorari p. A-4.

2. All the contentions of the Petitioner have been raised and fully determined in the state courts, including the issues of alleged violation of Petitioner's constitutional rights. *See* Petition for Certiorari, pp. A-6 - A-8.

3. The Plaintiff cannot relitigate issues which were determined against her as she had full opportunity to litigate those issues in the state courts. *See* Petition for Certiorari pp. A-6 - A-7.

4. The judgment of the state courts is conclusive and it is not necessary in the state courts' opinions that it speak to every issue, including constitutional claims, when deciding a case. *See* Petition for Certiorari, pp. A-7 - A-8.

Case authority supports the decision of the Court of Appeals. It is clear and unambiguous that suit against a state official in his or her official capacity is treated as a suit against the State. A suit brought against the District Court for the State of Iowa, Story County, and the Supreme Court of Iowa is not against an individual but against a state agency, which is forbidden. *See Will v. Michigan Dept. of State Police,* 491 U.S. 58 (1989). The Petitioner erroneously claims that the foregoing case is in conflict with *Hafer v. Melo,* 502 U.S. ___, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991). In fact, *Hafer* simply held that a state official may be sued in his or her individual capacity for wrongful actions made under color of law.

All issues previously raised or which should have been raised in the state litigation precludes the federal courts from relitigating the same matter. The Petitioner claims that the Iowa courts ignored her constitutional claims and, therefore, she has been denied a full and fair hearing. While it is true the Petitioner has raised time and time again constitutional claims, her claims simply have no substance. These same claims were previously raised in the Iowa courts and determined against the Petitioner. *In the Matter of the Estate of Clark,* 447 N.W.2d 549 (Iowa App. 1989) and *Clark v. Clark and Merchants Mutual Bonding Co.,* 476 N.W.2d 367 (Iowa 1991), cert. denied, ___ U.S. ___, 112 S.Ct. 640, 116 L.Ed.2d 658 (1991).

Furthermore, the Petitioner, Suzanne Clark, petitioned the Supreme Court of the United States for certiorari in *Clark v. Clark and Merchants Mutual Bonding Co.*, 476 N.W.2d 367 (Iowa 1991), cert. denied, ___ U.S. ___, 112 S.Ct. 640, 116 L.Ed.2d 658 (1991), which was denied on December 9, 1991. If the Supreme Court of the United States had felt that the constitutional issues raised here had merit, it certainly would not have denied this prior Petition for Certiorari. Since the United States Supreme Court had the opportunity and right to make the determination whether they would accept the issues at that time, there is no purpose or reason to think that the decision would or could be otherwise in the subsequent proceedings.

In the present case, all issues now raised were previously raised and considered by the Iowa courts and final judgment has been rendered. Issue preclusion applies to all points presented, decided and necessarily involved regardless of whether such points were specifically noted or not. *Lawson v. Fordyce*, 21 N.W.2d 69, 78 (Iowa 1945). *See* also Schwartz and Kirklin, § 1983 Litigation: claims, defenses and fees, § 11.7 at p. 656 (2nd 1991).

The United States district courts are without jurisdiction to review final judgments of the state court. In *Rooker v. Fidelity Trust Co.*, 262 U.S. 413 (1923), the United States Supreme Court refused to declare the decision of a state court in Indiana null and void:

> It affirmatively appears from the bill that the judgment was rendered in a cause wherein the circuit court had jurisdiction of both the subject-matter and the parties; that a full hearing was had therein; that the judgment was

> responsive to the issues, and that it was affirmed by the supreme court of the state on appeal by the plaintiffs. . . . If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed and modified, it would be an effective and conclusive adjudication. . . . The jurisdiction possessed by the [federal] district courts is strictly original. . . . Besides, the period within which a proceeding might be begun for the correction of errors such as are charged in the bill had expired before it was filled . . . and as is pointed out in Voorhees v. Jackson, 10 Pet. 449, 474, 9 L. ed. 490, 500, after that period elapses an aggrieved litigant cannot be permitted to do indirectly what he no longer can do directly.

Id. at 415, 416.

The foregoing principal of law has been repeatedly affirmed. In *Dist. Col. Court of Appeals v. Feldman*, 460 U.S. 462 (1983), the Court held:

> The District of Columbia Circuit properly acknowledged that the United States District Court is without authority to review final determinations of the District Court of Columbia Court of Appeals in judicial proceedings. Review of such determinations can be obtained only in this Court.

Id. at 476. *See In Re Randall,* 640 F.2d 898 (8th Cir. 1981), cert. denied, 454 U.S. 880; *Arthur v. Supreme Court of Iowa,* 709 F.Supp. 157 (S.D. Iowa 1989); *Hale v. Harney,* 786 F.2d 688 (5th Cir. 1986).

In addition, claims and issues which were previously raised in proceedings between the same parties concerning the same subject matter and determined in the state court cannot again be raised and reviewed by the United States District Court. The United States Supreme Court held, in *Allen v. McCurry,* 440 U.S. 90, that under res judicata, a final judgment on the merits of an action precludes the same parties from relitigating the same issues that were or could have been raised in the prior action.

The Iowa Supreme Court has established four prerequisites to the application of issue preclusion, all of which are present in the case:

1. The issue concluded must be identical.
2. The issue must have been raised and litigated in the prior action.
3. The issue must have been material and relevant to the disposition of the prior action.
4. The determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.

Brown v. Monticello State Bank of Monticello, 360 N.W.2d 81, 84 (Iowa 1984); *Hunter v. City of Des Moines,* 300 N.W.2d 121, 123 (Iowa 1981).

Although Suzanne Clark claims she is not attempting to relitigate the issues determined by the state courts of

Iowa, she constantly is attempting to change the judgment through the guise of her unfounded constitutional claims. Suzanne Clark has been given more than sufficient time to fairly and fully present her case through two full appeals to the Appellate Courts of the State of Iowa, and a subsequent denial of her Petition for Certiorari to the Supreme Court of the United States. A full and fair opportunity to litigate a federal claim in state court requires only that the state's judicial procedure satisfy minimal procedural due process requirements. *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 487 (1982). This certainly has occurred in the present case.

CONCLUSION

The claims and arguments of the Petitioner are at best frivolous and without merit. This litigation has been through numerous court proceedings and hearings, including two separate appeals to the Iowa Supreme Court and a Petition for Certiorari to the Supreme Court of the United States. The litigation has lingered now for five years. We are now engaged in these proceedings, which is nothing more but an attempt to alter the final judgments of the state courts. The clear purpose of the Petitioner is simply to delay the execution of the state judgments and delay the closing of the estate proceedings. The Petitioner, Suzanne Clark, and her attorney should be subject to sanctions for such delaying tactics.

Respectfully submitted,

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